Л.Н. Гумилев атындағы Еуразия ұлттық университетінің ХАБАРШЫСЫ.
ISSN: 2616-6844. eISSN: 2663-1318

ҚҰҚЫҚ СЕРИЯСЫ/ LAW SERIES/ СЕРИЯ ПРАВО

IRSTI 10.27.61
Article

https://doi.org/10.32523/2616-6844-2024-146-1-233-246

Legal basis for explaining the contractual terms of «Contra proferentem»

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Abstract. Attention is drawn to the fact that in the legal practice of the Republic of Kazakhstan there is no possibility of interpreting a civil law contract using the principle of «contra proferentem» with the currently valid legal norms. In the legal literature of the Republic of Kazakhstan, there is a lack of special research that takes into account the development trends of a modern market society, the rules for interpreting a contract with the principle of «contra proferentem» in the legal systems of Western countries with developed economies. In such cases, a critical analysis of the rules of foreign law and the practice of its application that govern the process of interpretation of contractual requirements of the «contra proferentem» principle is relevant. This analysis is presented using examples of the practice of applying legal norms in Western countries. A review of domestic judicial practice allows us to conclude that many issues related to the interpretation of a civil contract, in particular those related to establishing the content of vague and ambiguous contracts, are faced by the courts of the Republic of Kazakhstan. It should be recognized that in the practice of the courts of the Republic of Kazakhstan such approaches have not yet been developed. In order to fill the gap in the interpretation of the content of a civil contract in the domestic legal system, this research project is based on foreign experience.

In this article, the authors comprehensively analyzed the principle of «contra proferentem» in the institution of interpretation of contractual terms of a civil law contract in the country and made recommendations for increasing its effectiveness.

Keywords: Kazakhstan, Contra proferentem, Civil law, courts, human rights, Civil Law contracts, principles, solutions.

Received 15.03.2024. Revised 17.03.2024. Accepted 25.03.2024. Available online 29.03.2024

Introduction

In such cases, a critical analysis of the norms of foreign law and the practice of its application is relevant, which regulates the process of interpreting the contractual terms of the "contra proferentem" principle. Such an analysis is presented in the examples of the practice of applying the French Civil Code and the German Civil Code. A review of domestic judicial practice allows us to conclude that many issues related to the interpretation of a civil law contract, in particular, the establishment of the content of indefinite and bipartisan contracts, are facing the courts of the Republic of Kazakhstan.

To answer these questions, it is necessary to conduct a scientific study of the topic of interpretation of a civil law contract. The above indicates the scientific and practical relevance of the topic of the article.

The object of the study is public relations regulated by the norms on the interpretation of a civil law contract. The subject of the study includes the norms of domestic and foreign law governing the process of interpreting the contract, as well as the practice of their application. Also, for comparative legal purposes, certain norms of foreign law are taken into account that regulate the interpretation of contracts.

Discussion

In modern legal science and practice, in connection with the correct execution of a civil law contract, the problem of interpreting the content and terms of the contract is acute. Currently, different approaches to the interpretation of civil law contracts are used in different states of the world. The study of the interpretation of the contractual terms "Contra proferentem" is very useful for making correct decisions by the judicial authorities of the Republic of Kazakhstan. For this above-mentioned purpose of our master's research work, first of all, the rules for the interpretation of civil law contracts in the practice of foreign states will be considered; secondly, the methods of interpretation of civil law contracts existing in the law of the Republic of Kazakhstan have been identified; thirdly, the prospects for the application or implementation of the rules for the interpretation of civil law contracts used in foreign practice were evaluated in the legislation of the Republic of Kazakhstan.

First of all, it is necessary to determine in what cases there is a need to clarify the Civil Law contract. We all know that in the scientific literature in the field of civil law, the presence of at least two different concepts in the content of a civil law contract is a general prerequisite for the emergence of a dispute about the interpretation of a contract. Therefore, it is necessary to define in this contract at least two concepts that must be separated from each other.

First, there is a need to explain the essence of the Civil Law contract.

Second, it is necessary to identify controversial words that give at least two civil law contracts.

The interpretation of the contract goes one way or another, when the parties read it. Thus, the subject perceives the content of the Civil Law contract, understands the meaning of the Civil Law contract and its individual provisions, and can also interpret the information that he perceives for others.

Controversial words that give two meanings in a civil law contract, in turn, arise when the number of subjects studying the content of the contract is two or more. Initially, as a rule, a civil law agreement is the parties to the contract, each of which has a different perception of the controversial word, which gives these two meanings. Such a situation can be a consequence of various circumstances: the presence of an unknown or incomprehensible condition in the contract (when it has two or more meanings), or there may be provisions that contradict each other.

In civil law contracts, there are sometimes provisions that directly contradict each other. Their definition is also a sign of the carelessness of the parties in the development of the contractual text. For example, in the judicial practice of the Republic of Kazakhstan, one clause of the bank lending agreement states that in case of judicial collection of debt on principal and accrued interest, interest for the use of the loan is accrued on the day of the court decision, and in another clause of this Agreement, interest is accrued from the date of issuance by the lender to the date of repayment of the loan. Thus, the moment of termination of the borrower's obligation to pay interest for the use of money remained unclear.

In such cases, it raises the question of methods of interpretation of civil law contracts in case of a need for clarification of disputed contracts in judicial practice. To judicial judges faced with similar problems in foreign judicial practice, the English lawyer R. Posner offers four ways to solve the problem of interpretation of civil law contracts (Posner, 2004):

The first method is known to all developed jurisdictions: if its unambiguous meaning does not directly follow from the text of the contract, then it is necessary to disclose what the parties really meant, in other words, to reveal the Common will of the parties. However, this method can only be used if the parties actually had a common will on the disputed issue, but expressed it incorrectly in the text of the agreement.

The second method is closely related to judicial discretion and is a purely English institution – the "doctrine of a reasonable person". At the same time, the judge chooses a more rational, cost-effective interpretation of the contract, that is, he makes an assumption about what condition a reasonable entrepreneur will include in the contract instead of the parties.

The concept of "reasonable person" is associated with the rule of interpretation of conditions, such as the "Best Guess Rule". At the same time, the judge does not even need to use other evidence to determine the content of the disputed contract. Using the human quality of rationality, the judge interprets the controversial situation as if the parties foresaw the occurrence of a situation due to ambiguity in the contract when concluding a contract.

The third method is a literal formal interpretation of the contract. According to it, it is assumed that the contract is an agreement of the parties, in which all issues related to its implementation are fully and fully regulated. This assumption deprives the parties of the right to refer to all other evidence to confirm the terms of the contract. For example, it is contained in Article 392 of the Civil Code of the Republic of Kazakhstan, according to which: when interpreting the terms of the contract, the court takes into account the literal meaning of the words and phrases contained in it. If the contract is not clear, the literal meaning of its terms is established by comparison with other terms of the contract and the meaning as a whole.

The fourth method is clear rules for interpreting the condition. It can be described as "rules used to draw lots" (Tie-breaking rules). These include the rules for interpreting the contract

against the party attempting to enforce the contract and the rules for interpreting the contract against the party drafting the contract. The latter is better known as the "contra proferentem" principle.

Currently, the principle of "contra proferentem" has become widely used in World legal practice. For example, the Civil Code of the French state states that "if there are doubts, the contract must be interpreted against the person who stated the terms of the contract (in the contract) and in favor of the person who assumed the obligations"(https://pnu.edu.ru/ru/faculties/full_time/isptic/iogip/study/studentsbooks/histsources2/igpzio49/).

Article 4.6 of the principles of UNIDROIT international commercial treaties states that "if the terms of the treaty presented by one party are unclear, then preference is given to interpretation that is contrary to the interests of that party" (https://docs.cntd.ru/document/901784163).

As mentioned above, we identified the principle of "contra proferentem", which has long been used in almost all countries of the world, as the direction of our article and set ourselves the goal of analyzing the legal situation of its implementation in our country. With us, he has not yet pierced his way in judicial practice.

Taking the topic of the principle of «Contra proferentem», let's try to analyze its general legal situation. The Latin phrase "contra proferentem" gives us the impression that it is against the bearer, which can be further understood as " the fault of the contract maker". In general, the principle of "contra proferentem" is used to place the blame on the party that created or requested the text of the bilateral treaty. Allows you to apply the contract as a party that has concluded it, as well as as a fine or legal punishment for intentionally or deliberately introducing and including a vague, ambiguous contract in a civil contract. The bottom line is that the contract developer or presentation party deliberately uses words that give an ambiguous interpretation of the content of the contract to create or provide results in their interests. Deliberate ambiguity or ambiguity is an attempt to alleviate the principle of "contra proferentem" and, when the laws are enforced, will certainly provide its own help in correctly assessing the ambiguity in favor of the innocent party.

For a legal study of the principle of «Contra proferentem», it would be incomprehensible to analyze the principle of" contra proferentem "from a legal point of view without considering the history of the general formation and development of the law institution of the principle of "contra proferentem". For this reason, we can talk about the origin of the institution of law of the principle" contra proferentem".

In Roman law, the principle "Cum quaeritur in stipulatione, quid acti sit, ambiguitas contra stipulatorem est" (Celsus ' statement) was formed regarding the interpretation of conditions, according to which it was argued that if the condition is unclear, the principle of interpretation should be applied to the party that proposed the condition. Then medieval European lawyers, systematizing the scattered conclusions of the idea of Celsus's conclusion in the text of the Corpus Juris Civilis regarding different types of contracts, concluded that the general principle of "contra proferentem" should be interpreted in favor of the one to whom the contract presented it at the time of drawing up an ambiguous contract and, accordingly, in favor of the one who accepted it (Zimmermann, 1990).

Medieval European lawyers, in the text "Corpus Juris Civilis", systematize the different views of this idea on different contracts, systematizing the general principle of interaction "contra

proferentem", according to which it was argued that in bilateral or multilateral agreements an incomprehensible condition (condition of the contract) should be interpreted against the person who presented it, and in favor of the party that accepted it.

There was a period when the principles of morality, justice and equality of parties and honesty began to be recognized in European countries and in the courts of the United States. Since then, the principle of" contra proferentem " has been widely developed in European, English and American law, traditionally enshrined in acts of international unification of contract law and gradually turned into a simple principle familiar to any lawyer.

Since then, the principle of" contra proferentem " has been widely developed in European, English and American law, traditionally enshrined in acts of international unification of contractual law, and gradually became a principle and reality familiar to any foreign lawyer. Modern civil law as mentioned in the literature, at the beginning of the XXI century this principle was successfully established. Specifically, in the world, this principle of interpretation of commercial contracts is universally recognized and is used as a legal principle in the legal systems of many states. For example, Germany, the Netherlands, France, Spain, Italy, Austria, etc. the principle of "contra proferentem" was reflected in the norms of law of international and developed Western European countries:

* Establishes the legal definition of the principle "contra proferentem" in relation to any commercial contracts in Article 4.6 of the treaty " UNIDROIT principles of international commercial contracts;

* The principle of "Contra proferentem" is enshrined in Article 5 of the EU directive 1993 "on unfair terms of Consumer Contracts" with respect to consumer contracts;

* Enshrined in Article 5:103 of the Treaty" on the principle of European contract law " with respect to individual non-agreed terms of any contracts;

* Enshrined in Article 305, paragraph 2 of the German Civil Code the application of the "contra proferentem" principle for consumer or standardized conditions;

* Established in subparagraph 2 of Article 133 of the French consumer code the application of the principle "contra proferentem" in relation to contracts concluded with consumers or contracts concluded with non-professionals;

* Enshrined in Article 6:238, paragraph 2 of the Dutch Civil Code the application of the "contra proferentem" principle in relation to standardized contracts with a consumer or small entrepreneur;

* Established in Article 1370 of the Italian Civil Code the application of the principle "contra proferentem" in relation to standard conditions;

* Article 1288 of the Spanish Civil Code establishes the application of the "contra proferentem" principle in relation to any conditions;

* Article 915 of the Austrian civil code enshrines the application of the "contra proferentem" principle to any conditions that are not personally agreed upon in relation to any conditions, as well as to any terms of a contract concluded under the prevailing influence of one of the parties.

Above you can see a number of rules for interpreting the principle of" contra proferentem " in different legal systems. In many, the preferred interpretation option, rather than the determination of the Will and understanding of the parties or reasonable person who proposed

the conditions, is focused on the principle of "contra proferentem". At the same time, the advantage allows the party that proposed the formulation of an unclear contract or prepared the text of the contract to be recognized as a person who is a professional in the relevant field, and the non-professional party that accepted the proposal to apply the principle of "contra proferentem".

The objective reasons for the active application of the principle of "contra proferentem" in foreign countries are primarily related to political and legal views. This means of determining the content of the contract, which can be explained both by direct interpretation and by attempts to determine the true or probable will of the parties, and has become clear from a certain ethical and economic point of view.

The method of domination of the laws of developed Western states in the overwhelming majority, when the terms of the treaty proposed by one party are unclear, preference is given to the interpretation opposite to the position of the proposed party to the treaty. First of all, we are talking about consumer contracts, as well as agreements between entrepreneurs in the face of obvious inequality of negotiation opportunities. It can be understood that the weak party does not have the opportunity to negotiate certain incomprehensible conditions and, accordingly, ambiguity and other shortcomings in the formulation of these conditions involuntarily give its consent to the strong party that developed and proposed them. In other words, the strong party is a professional company in the relevant field (insurance, banking, construction, legal services, transportation, responsible storage, retail, etc.). In these cases, the creator of the contract actually controls its content alone, and the ambiguity of the contract to them is clearly manifested. This is possible both in simple negligence and in deliberate, where the developer specifically uses the incomprehensible text of the terms of the contract to complicate their understanding for some categories of counterparties (primarily consumers).

At the same time, it should be borne in mind that in the case of equal negotiations on the conclusion of entrepreneurial contracts, the "fault" of the developer is not so obvious, since it can be associated, for some reason, with the carelessness of the counterparty who accepted the incomprehensible contract, when there is a real opportunity to negotiate and adjust such a contract. However, it is clear here that the original source of the problem was precisely the developer of the contract contract, and when comparing the share of the parties to each contract in its occurrence, the share of the developer's fault always seems to prevail.

In practice, when it comes to consumer contracts, disputes often arise about the terms of financing rates, including the interest rate of a second-tier bank. Also, situations arise with regard to the execution of bills, the text of which does not mention the exchange rate for certain currency exchange operations at the internal rate of a second-tier bank in the repayment of a bill obligation, or the exchange rate for transactions with own bills. In both cases, one interpretation of the controversial situation is more profitable for the bank, the other for the consumer of banking services.

The principle of Contra proferentem is a clear legal structure, so sometimes it can be considered an interpretation. Based on the generally accepted definition in the theory of law, the interpretation of law is understood as the activity of establishing the content of a legal act for its practical implementation, while this activity traditionally consists of two aspects: concepts

and interpretation. the object of concepts can be both normative acts and acts of application of law, civil law contracts, etc. In the theory of civil law, the concept of interpreting the term does not differ from the law developed in the general theory. Interpretation of a condition is understood as a two-way process of interpreting the content of an instruction and interpreting it (Kostikov, 2013).

Thus, any type of interpretation, regardless of the object to which the interpretation is directed, is always aimed at determining the specific content of specific rules.

Without going into detail into one of the central issues of the interpretation of contracts, namely the problem of the ratio of Will, we note that the purpose of applying the principle of contra proferentem is not to find the option that the parties clearly stated at the conclusion of the contract and does not even formally establish the literal meaning of its text. The concept of this principle states that the interpretation of the controversial situation is carried out against the party that proposed this condition. Therefore, for the court, the content of the disputed contract will be practically irrelevant, only the person who became its author will be important to him. But although such an interpretation does not allow us to reveal the true meaning of the contract agreement, it has a number of positive qualities.

First of all, it should be noted that the interpretation of contra proferentem is a kind of rescue tool for ships, since it can only be used after applying all the methods specified in this article. If a similar interpretation is used, this means that all attempts by the court to determine the semantic meaning of the ambiguous situation and the general will of the parties did not lead to the expected result and involve the use of an interpretation method against the proposer as the only solution.

Secondly, the incomprehensible terms of the contract are, of course, a negative legal phenomenon that does not adorn the contractual experience. In this regard, the contra proferentem interpretation, on the one hand, punishes the party that proposes an ambiguous contract, since it is interpreted against it, and on the other hand, encourages the qualitative development of contracts.

In this regard, in the legal literature, the principle of contra proferentem can be considered functionally as a sanction for the vague formulation of the contract, which in the future encourages the parties to conclude specific contracts.

Today, the principle of" contra proferentem " is a legal doctrine that any clause in contract law must be interpreted as ambiguous, against the interests of the party that made it, introduced it, or requested the introduction of that clause. The principle of "Contra proferentem" is guided by the legal interpretation of contracts and is usually applied when an agreement is concluded in court.

Judicial practice also confirms that the main type of interpretation of contracts in accordance with the law of Kazakhstan is a literal and systematic interpretation. In case of disagreements between the parties in the understanding of a civil law contract in the Republic of Kazakhstan, the interpretation of the contract is carried out by the court. At the same time, the court was endowed with broad powers: it can go beyond the scope of the agreement in order to determine the true intentions of the parties, and not only based on the text of the agreement and its content. However, the second method of interpretation can be used only if the study of the text of the agreement does not allow determining the specific intentions of the parties.

In the understanding of a civil law contract in the Republic of Kazakhstan, A well-known domestic scientist M. K. Suleimenov identifies three consistently applicable rules for applying the procedure for interpreting a civil law contract (https://online.zakon.kz/Document/?doc_id =36575914&pos=265;778#pos=265;778):

The first is to determine the literal meaning of the words and phrases It contains, that is, a philological (or grammatical) interpretation. Such an interpretation makes it possible to determine not only the meaning and content of individual words and phrases, but also the meaning of their combination;

The second is the comparison of the relevant terms of the contract with other terms and the meaning as a whole, that is, the so-called systematic interpretation. At the same time, the location of the contract in the text of the contract is taken into account. For example, it states that a condition located in the" special rules "section should take precedence over a condition located in the "general rules" section. In one arbitration case, the meaning of the term "status of the contract" was decided by analyzing the term «legal status» of the contract;

Third, if the application of the first two rules does not help, the definition of a specific general will, taking into account the purpose of the contract. At the same time, negotiations, correspondence of the parties, the practice established in the relations of the parties, the customs of business turnover are taken into account.

In accordance with article 392 of the Civil Code of the Republic of Kazakhstan, it can be concluded that in addition to the possibility of interpretation of the contract only by the court, any participant in the Civil Contract has the right to interpretation. Another point in this case is established in judicial practice that in the event of a dispute, the final decision is usually made by the court. Therefore, in the event of a dispute, the parties will have to prove to the court the correctness of the interpretation of the contract (https://adilet.zan.kz/kaz/docs/ K940001000_).

The current civil code or other civil legislation of the Republic of Kazakhstan does not provide for a legal mechanism for applying the principle of "contra proferentem". Article 392 of the current civil code of the Republic of Kazakhstan states that the literal meaning of words and sentences in a civil law contract is taken into account in relation to incomprehensible or ambiguous words and sentences. However, the current rule of law does not provide for the full resolution of civil disputes related to the text in civil legal contracts.

For example, in civil legal relations, when the true rights and obligations of the parties are not resolved, there is a question of the ambiguity of the contract, a question before the court about choosing the most fair approach to identifying this ambiguity. If the court considering the dispute does not have the opportunity to extract the meaning of the contract directly from the text, the chances of a fair Court decision are reduced.

Therefore, we think it is appropriate to include in the content of Article 392 of the current civil code the principle: "apply against the party who proposed the draft or idea of the contract in cases where it is impossible to determine the specific rights and obligations of the parties to the Civil Law contract."

In the event of some ambiguity of any provisions of the contract using the principle of" Contra proferentem", it is interpreted against the party that drafted the contract and greatly

simplifies the judicial and arbitration practice due to the interpretation by the court of certain ambiguously formulated contractual terms.

In accordance with article 392 of the Civil Code of the Republic of Kazakhstan in force in the textual analysis of the content of civil contracts in the country, the ambiguity of contracts on the (interest (interest) or tariff) rate and market rate should be clarified, first of all, by the specific will of the parties by resorting to external sources. But it is clear that such a method will not help even in the described cases, therefore, the court, using the principle of "contra proferentem", should clarify the controversial situations in favor of the consumer of its services in advance, because it is obvious that the second-tier bank develops a draft of the relevant civil law contract and initiates the emergence of the disputed contract (https://adilet.zan.kz/kaz/docs/K940001000_).

In the Republic of Kazakhstan, the only form of filling out civil contracts is actively used-the application of dispositive norms. If the contract does not contain a provision regulating any situation, the dispositive norm of the law is subject to application if the parties do not deny its application directly with their consent.

In fact, the complementary interpretation, the essence of which is to create a hypothetical will of the parties, is not used in domestic practice, according to the English concept of situations in which inflammatory interpretation is supposed. However, it is possible to make recommendations to the legislatures to fill in the gaps in the law.

In case of disagreement between the parties regarding the terms of the main contract in accordance with article 392 of the Civil Code of the Republic of Kazakhstan, such conditions are determined in accordance with a court decision. However, here we know that mainly the use of dispositive norms is formed (https://adilet.zan.kz/kaz/docs/K940001000_).

In Kazakhstan practice, the court uses only one known method when applying a specific interpretation of a civil contract, or by concluding a settlement agreement between the parties, the defendant was obliged to pay the plaintiff a certain amount. This state of affairs at some times pushes certain parties to unjustified enrichment. For example, in modern judicial proceedings on loan agreements concluded with small financial organizations, many cases are resolved in favor of small financial organizations. As another example, in the collection of high interest, at the same time, there are cases when the parties do not introduce requirements for a complete termination of the civil conflict. Therefore, in this case, the court filled the gap in the settlement agreement, which means that when the parties conclude the settlement agreement, a complete termination of the civil conflict, leaving for either party no right to make any claim from the obligation in question.

Obviously, the court decision is aimed at preventing the plaintiff from abusing his rights. In our opinion, in order to correctly apply the interpretation of the content of the contract, it is necessary to develop specific criteria by which it should be applied. At the same time, the supplementary interpretation is subject to use only in exceptional cases in order to protect the weak side of the contract, and court interference in contractual relations should be minimized.

Currently, the Republic of Kazakhstan needs to form its own system of approaches to the interpretation of civil law contracts. Thus, the introduction of some foreign concepts of interpretation of contracts into the practice of the Republic of Kazakhstan of the Contra

Proferentem principle will allow to successfully resolve the issues of interpretation of the disputed contract

In general, the use of foreign experience in the interpretation of civil contracts should be positively assessed, since each of them has a rational principle necessary to explain the content of contracts.

Conclusion

Although the interpretation of the "contra proferentem" principle is currently applicable to many conditions, I believe that the scope of this principle should not be unlimited.

Firstly, in some countries, for example in Germany, it is considered impossible to apply this principle if the controversial situation is the subject of a separate agreement, that is, if both parties have a real opportunity to influence the content of the agreement and have a real impact on it, for example.

Secondly, in some foreign countries, the scope of this principle is limited by a clear framework of conditions. For example, in Italy it is used only in relation to standardized contracts, in France-in relation to contracts concluded with consumers or non-professionals. As practice shows, using the principle of "contra proferentem", the explanatory is used both in the interpretation of consumer contracts and in the interpretation of contracts concluded by economically equal entities, if both can be professional in the joint field.

The "Contra proferentem" principle is not the only one that can be used when interpreting the unclear terms of a contract. Sometimes there are situations when this principle does not apply due to circumstances that prevent it from being applied. Therefore, it is necessary to analyze how the interpretation against the proposer, the interpretation against the professional and the interpretation against the strengths, made mainly by a foreign practice, are related to each other, and carefully study whether they do not contradict each other and whether they can be used at the same time.

The contribution of authors.

Zh. Utegenova – abstract, keywords, introduction, information about the authors.
S. Adilgazy – methodology, results and discussion.
G. Teleuev – conclusion, list of references, transliteration.

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«Contra proferentem» термині шарттарын түсіндірудің құқықтық негізі

Аңдатпа. Қазақстан Республикасы құқықтық тәжірибесінде азаматтық-құқықтық келісім шартты «contra proferentem» қағидасын қолдана отырып қазіргі қолданыстағы құқықтық нормаларымен түсіндіру мүмкіндігі жоқтығына назар аударылды. Қазақстан Республикасының құқықтық әдебиеттерде, экономикасы дамыған батыс елдердің құқықтық жүйедегі «contra proferentem» қағидасымен шартты түсіндіру ережесінің қазіргі нарықтық қоғамның даму тенденцияларын ескеретін арнайы зерттеулердің жеткіліксіздігі байқалады. Мұндай жағдайда «contra proferentem» қағидасы шарт талаптарын түсіндіру процесін реттейтін шетелдік құқық нормаларын және оны қолдану практикасын сыни талдау өзекті болып табылады. Мұндай талдау батыс елдерінің құқықтық нормаларын қолдану тәжірибесінің мысалдарында ұсынылған. Отандық сот практикасын шолу кезінде азаматтық-құқықтық шартты түсіндіруге қатысты, атап айтқанда, белгісіз және екіұшты мағына беретін шарттардың мазмұнын белгілеуге байланысты көптеген мәселелер Қазақстан Республикасы соттарының алдында тұрған проблема деген қорытынды жасауға мүмкіндік береді. Қазақстан Республикасы соттарының тәжірибесінде мұндай тәсілдер әлі әзірленбегенін мойындау керек. Сол үшін отандық құқық жүйесіндегі азаматтық-құқықтық келісімшарт мазмұнын түсіндірудегі олқылықты толтыру үшін бұл зерттеу жобасы шетелдік тәжірибеге негізделеді.

Мақалада авторлар кешенді түрде еліміздегі азаматтық-құқықтық келісім шарттық талаптарын түсіндіру институтына «contra proferentem» қағидасын құқықтық тұрғыдан талдайды және оның тиімділігін арттыру жөнінде ұсыныстар береді.

Түйін сөздер: Қазақстан, Contra proferentem, азаматтық құқық, сот, адам құқықтары, азаматтық-құқықтық шарт, қағидат, шешім.

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Правовая основа для разъяснения договорных условий «Contra proferentem»

Аннотация. Обращено внимание, что в правовой практике Республики Казахстан отсутствует возможность толкования гражданско-правового договора с применением принципа «contra proferentem» с действующими в настоящее время правовыми нормами. В правовой литературе Республики Казахстан отмечается недостаточность специальных исследований, учитывающих тенденции развития современного рыночного общества, правила толкования договора с принципом «contra proferentem» в правовых системах западных стран с развитой экономикой. В таких случаях актуальным является критический анализ норм иностранного права и практики его применения, регулирующих процесс толкования договорных требований принципа «contra proferentem». Такой анализ представлен на примерах практики применения правовых норм западных стран. Обзор отечественной судебной практики позволяет сделать вывод о том, что многие вопросы, касающиеся толкования гражданско-правового договора, в частности, связанные с установлением содержания неопределенных и неоднозначных договоров, стоят перед судами Республики Казахстан. Следует признать, что в практике судов Республики Казахстан такие подходы еще не разработаны. Для того, чтобы заполнить пробел в толковании содержания гражданско-правового договора в системе отечественного права, данный исследовательский проект основывается на зарубежном опыте.

В данной статье авторами комплексно проанализирован принцип «contra proferentem» в институт толкования договорных условий гражданско-правового договора в стране и даны рекомендации по повышению его эффективности.

Ключевые слова: Казахстан, Contra proferentem, гражданское право, суды, права человека, гражданско-правовые договоры, принципы, решения.

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